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ABSTRACT

This report presents Wisconsin state legislation on long-term care insurance. Part I summarizes key provisions of six 1987 assembly bills concerned with long-term care insurance. Part II describes activities of the Wisconsin State Legislative Council's Special Committee on Long-Term Health Care Insurance. Part III provides background information on long-term care insurance. Parts IV through IX describe the background and major provisions of the six bills: (1) 1987 Assembly Bill 382, relating to a program for long-term care insurance and creating the Council on Long-Term Care Insurance in the Department of Health and Social Services; (2) 1987 Assembly Bill 383, relating to the provision of information and counseling on insurance and medical assistance by the Board on Aging and Long Term Care to certain entities for consumer use and making appropriations; (3) 1987 Assembly Bill 384, relating to long-term care insurance coverage for state employees and annuitants who were state employees and their spouses, children, and parents; (4) 1987 Assembly Bill 385, relating to excepting service provision in certain facilities under continuing care contract from capital expenditure review requirements; (5) 1987 Assembly Bill 386, relating to expanding the authority of the Wisconsin Health Facilities Authority to issue bonds and finance projects; and (6) 1987 Assembly Bill 387, relating to review and appeal procedures under a Medicare supplement policy, Medicare replacement policy, or a nursing home insurance policy. (NB)

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WISCONSIN LEGISLATIVE COUNCIL

REPORT NO. 11 TO THE 1987 LEGISLATURE

LEGISLATION ON LONG-TERM CARE INSURANCE

1987 ASSEMBLY BILL 382, RELATING TO A PROGRAM FOR LONG-TERM CARE INSURANCE AND CREATING A COUNCIL ON LONG-TERM CARE INSURANCE IN THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES

1987 ASSEMBLY BILL 383, RELATING TO THE PROVISION OF INFORMATION AND COUNSELING ON INSURANCE AND MEDICAL ASSISTANCE BY THE BOARD ON AGING AND LONG TERM CARE TO CERTAIN ENTITIES FOR CONSUMER USE AND MAKING APPROPRIATIONS

1987 ASSEMBLY BILL 384, RELATING TO LONG-TERM CARE INSURANCE COVERAGE FOR STATE EMPLOYES AND ANNUITANTS WHO WERE STATE EMPLOYES AND THEIR SPOUSES, CHILDREN AND PARENTS

1987 ASSEMBLY BILL 385, RELATING TO EXCEPTING SERVICE PROVISION IN CERTAIN FACILITIES UNDER CONTINUING CARE CONTRACTS FROM CAPITAL EXPENDITURE REVIEW REQUIREMENTS

1987 ASSEMBLY BILL 386, RELATING TO EXPANDING THE AUTHORITY OF THE WISCONSIN HEALTH FACILITIES AUTHORITY TO ENSURE BONDS AND FINANCE PROJECTS

1987 ASSEMBLY BILL 387, RELATING TO REVIEW AND APPEAL PROCEUDURES UNDER A MEDICARE SUPPLEMENT POLICY, MEDICARE REPLACEMENT POLICY OR A NURSING HOME INSURANCE POLICY

Legislative Council Staff
May 28, 1987

State Capitol
Madison, Wisconsin

RL 87-11

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s. 13.81, Stats.

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(2) Appointed to replace Leon Weinberger, who resigned from the Committee, by a September 25, 1986 mail ballot.

WISCONSIN LEGISLATIVE COUNCIL
REPORT NO. 11 TO THE 1987 LEGISLATURE*

LEGISLATION ON LONG-TERM CARE INSURANCE

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*Prepared by: Janice M. Baldwin and Richard Sweet, Senior Staff Attorneys, Legislative Council Staff.

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PART I

KEY PROVISIONS OF 1987 ASSEMBLY BILLS

A. 1987 ASSEMBLY BILL 382, RELATING TO A PROGRAM FOR LONG-TERM CARE INSURANCE AND CREATING A COUNCIL ON LONG-TERM CARE INSURANCE IN THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES

1. Creates a nine-member Council on Long-Term Care Insurance that "sunsets" on September 1, 1988.

2. Requires the Department of Health and Social Services (DHSS), in consultation with the Council on Long-Term Care Insurance and other specified state and federal agencies, to design a program on long-term care insurance that includes: (a) premium subsidies by the state, based on ability-to-pay; (b) reinsuring by the state of policies issued in Wisconsin; and (c) allowing persons to retain liquid assets in excess of the amount which they would ordinarily be allowed to retain for Medicaid eligibility, if they purchased long-term care insurance.

B. 1987 ASSEMBLY BILL 383, RELATING TO THE PROVISION OF INFORMATION AND COUNSELING ON INSURANCE AND MEDICAL ASSISTANCE BY THE BOARD ON AGING AND LONG TERM CARE TO CERTAIN ENTITIES FOR CONSUMER USE AND MAKING APPROPRIATIONS

1. Allows the Board on Aging and Long Term Care (BOALTC), through the Medigap Hotline, to provide information and counseling about long-term care insurance and Medicaid.

2. Requires the BOALTC to provide training, educational materials and technical assistance to organizations which will provide insurance and Medicaid information to the public.

C. 1987 ASSEMBLY BILL 384, RELATING TO LONG-TERM CARE INSURANCE COVERAGE FOR STATE EMPLOYES AND ANNUITANTS WHO WERE STATE EMPLOYES AND THEIR SPOUSES, CHILDREN AND PARENTS

1. Requires the Group Insurance Board to offer long-term care insurance to state employes and annuitants and their spouses, parents and children. The state employe or annuitant would pay the entire premium.

D. 1987 ASSEMBLY BILL 385, RELATING TO EXCEPTING SERVICE PROVISION IN CERTAIN FACILITIES UNDER CONTINUING CARE CONTRACTS FROM CAPITAL EXPENDITURE REVIEW REQUIREMENTS

Allows continuing care retirement communities to obtain licenses to operate home health agencies for their own residents, notwithstanding the limit on new home health agencies under the capital expenditure review law.

E. 1987 ASSEMBLY BILL 386, RELATING TO EXPANDING THE AUTHORITY OF THE WISCONSIN HEALTH FACILITIES AUTHORITY TO ISSUE BONDS AND FINANCE PROJECTS

Allows continuing care retirement communities to obtain funding through tax-exempt bonds issued by the Wisconsin Health Facilities Authority (WHFA).

F. 1987 ASSEMBLY BILL 387, RELATING TO REVIEW AND APPEAL PROCEDURES UNDER A MEDICARE SUPPLEMENT POLICY, MEDICARE REPLACEMENT POLICY OR A NURSING HOME INSURANCE POLICY

1. Requires each insurer offering a Medicare supplement (also called "Medigap") policy or a nursing home insurance policy to establish a procedure for the review and appeal of a denial of benefits.

2. Requires those insurers to provide the Office of the Commissioner of Insurance (OCI) with an annual summary of its reviews and appeals and their dispositions.

PART II

COMMITTEE ACTIVITY

A. ASSIGNMENT

The Legislative Council established the Special Committee on Long-Term Health Care Insurance by a June 17, 1986 mail ballot, based on a June 11, 1986 letter from Speaker Tom Loftus. The Special Committee was directed to study: (1) the need for long-term health or custodial care insurance for the elderly and ways to encourage the private sector to offer such insurance; and (2) possible alternatives to insurance mechanisms to meet such health care and custodial needs.

The membership of the Special Committee, appointed by July 28 and September 25, 1986 mail ballots, consisted of three Senators, five Representatives and 10 Public Members.

The Special Committee held six meetings, all at the State Capitol in Madison, on the following dates:

September 15, 1986	December 18, 1986
October 15, 1986	January 22, 1987
November 14, 1986	February 23, 1987

B. SUMMARY OF MEETINGS

At its initial meeting on September 15, 1986, the Special Committee received testimony from DHSS Secretary Linda Reivitz on the status of long-term health care insurance in financing long-term health care, with respect to its availability, use and adequacy. She also presented a brief outline of a plan for integrating long-term care insurance and Medicaid by allowing the retention of more assets and income than presently permitted for Medicaid eligibility. Ms. Hilde Neujahr, Division Administrator, OCI, outlined the regulatory procedure and substantive provisions for long-term care insurance in Wisconsin. The Special Committee also reviewed a staff paper providing an overview of long-term care insurance issues and alternatives to insurance.

At its October 15, 1986 meeting, the Special Committee received testimony from invited speakers about ideas utilized or under consideration in other states regarding long-term care financing mechanisms, the extent of public unawareness of the need to provide for long-term care and the role that home health care can play in long-term care.

At its November 14, 1986 meeting, the Special Committee received testimony by invited speakers regarding methods to create a market for long-term care insurance, efforts by the insurance industry to stimulate a market for long-term care insurance, the advantages which continuing care retirement communities can provide with respect to long-term care and the possible role of adult day care centers as an alternative to institutionalization.

At its December 18, 1986 meeting, the Special Committee heard presentations by a health policy analyst and a representative of a health insurance company discussing various concepts and proposals which may encourage the expansion of the supply of and demand for long-term care insurance and for alternatives to insurance. In addition, the Special Committee reviewed six Staff Memos regarding the assessment of patients under the Community Options Program, home care coverage under disability insurance policies, required Medicare certification for new nursing home beds, continuing care retirement communities, factors to consider in a link between long-term care insurance and Medicaid eligibility and administrative rule standards for nursing home insurance.

At its January 22, 1987 meeting, the Special Committee reviewed a DHSS memorandum regarding Medicare certification of nursing home beds and the possible consequences of eliminating capital expenditure review for continuing care retirement communities which establish their own home health agencies. In addition, the Special Committee reviewed four drafts relating to home health care in continuing care retirement communities, tax-exempt bond financing of continuing care retirement communities, Medicare certification of nursing home beds and a program to develop a relationship between the purchase of long-term care insurance and Medicaid eligibility criteria.

Two bill drafts were recommended for introduction by the Legislative Council. The Special Committee also reviewed two draft letters to the Secretary of DHSS and the Commissioner of Insurance relating to increasing public information about long-term care. The Special Committee authorized the Chairperson to dispatch the two letters, with slight modifications. Those letters and a response letter from the Commissioner of Insurance are included in Appendix 2 to this Report. The Special Committee discussed other possible legislative proposals on the relationship between prior hospitalization and nursing home insurance coverage, expansion of the "Medigap Hotline," sale of long-term care insurance to state employes and annuitants and grievance procedures of private insurers.

At its February 23, 1987 meeting, the Special Committee discussed and recommended to the Legislative Council the introduction of the remaining Bills described in this Report. The Special Committee also recommended a bill draft relating to Medicare certification of nursing homes, on which

no final action has yet been taken by the Legislative Council. Also, the Special Committee authorized the Chairperson to send a letter to the Secretary of DHSS regarding Medicare certification of nursing homes. That letter is included in Appendix 3 to this Report.

C. COMMITTEE AND COUNCIL VOTES

1. 1987 Assembly Bill 382, Relating to a Program for Long-Term Care Insurance and Creating a Council on Long-Term Care Insurance in the Department of Health and Social Services

At its January 22, 1987 meeting, the Special Committee on Long-Term Health Care Insurance recommended that the Legislative Council introduce the proposal by a vote of Ayes, 12 (Rep. Barrett; Sen. Lorman; Reps. Grobschmidt, Merkt, Ourada and Robinson; and Public Members Abramson, Bartkowski, Casper, Jardine, Stanchfield and Voegtli); Noes, 0; and Absent, 5 (Sens. Moen and Norquist; and Public Members Andreano, Blancke and Elconin).

At its March 25, 1987 meeting, the Legislative Council voted to introduce the proposal in the 1987 Legislative Session by a vote of Ayes, 18 (Speaker Loftus; Sen. Risser; Reps. Nelsen, Bell, Bradley, Coggs, Hauke, McEssy, Prosser, Schneider and Tesmer; and Sens. Davis, Engeleiter, Kreul, Lee, Moen, Norquist and Strohl); Noes, 0; and Absent, 3 (Rep. Clarenbach; and Sens. George and Harsdorf).

2. 1987 Assembly Bill 383, Relating to the Provision of Information and Counseling on Insurance and Medical Assistance by the Board on Aging and Long Term Care to Certain Entities for Consumer Use and Making Appropriations

At its February 23, 1987 meeting, the Special Committee on Long-Term Health Care Insurance recommended that the Legislative Council introduce the proposal by a vote of Ayes, 10 (Reps. Barrett, Grobschmidt, Ourada and Robinson; and Public Members Abramson, Bartkowski, Elconin, Jardine, Stanchfield and Voegtli); Noes, 0; and Absent, 7 (Sens. Moen, Lorman and Norquist; Rep. Merkt; and Public Members Andreano, Blancke and Casper).

At its March 25, 1987 meeting, the Legislative Council voted to introduce the proposal in the 1987 Legislative Session by a vote of Ayes, 16 (Speaker Loftus; Sen. Risser; Reps. Bell, Bradley, Coggs, Hauke, McEssy, Schneider and Tesmer; and Sens. Davis, Engeleiter, Kreul, Lee, Moen, Norquist and Strohl); Noes, 2 (Reps. Nelsen and Prosser); and Absent, 3 (Rep. Clarenbach; and Sens. George and Harsdorf).

3. 1987 Assembly Bill 384, Relating to Long-Term Care Insurance Coverage for State Employes and Annuitants Who Were State Employes and Their Spouses, Children and Parents

At its February 23, 1987 meeting, the Special Committee on Long-Term Health Care Insurance recommended that the Legislative Council introduce the proposal by a vote of Ayes, 11 (Reps. Barrett, Grobschmidt, Ourada and Robinson; and Public Members Abramson, Bartkowski, Blancke, Elconin, Jardine, Stanchfield and Voegtli); Noes, 0; and Absent, 6 (Sens. Moen, Lorman and Norquist; Rep. Merkt; and Public Members Andreano and Casper).

At its March 25, 1987 meeting, the Legislative Council voted to introduce the proposal in the 1987 Legislative Session by a vote of Ayes, 17 (Speaker Loftus; Sen. Risser; Reps. Bell, Bradley, Coggs, Hauke, McEssy, Prosser, Schneider and Tesmer; and Sens. Davis, Engeleiter, Kreul, Lee, Moen, Norquist and Strohl); Noes, 0; and Absent, 4 (Reps. Nelsen and Clarenbach; and Sens. George and Harsdorf).

4. 1987 Assembly Bill 385, Relating to Excepting Service Provision in Certain Facilities under Continuing Care Contracts from Capital Expenditure Review Requirements

At its January 22, 1987 meeting, the Special Committee on Long-Term Health Care Insurance recommended that the Legislative Council introduce the proposal by a vote of Ayes, 9 (Rep. Barrett; Sen. Lorman; Reps. Grobschmidt, Merkt and Robinson; and Public Members Bartkowski, Casper, Jardine and Stanchfield); Noes, 3 (Rep. Ourada; and Public Members Abramson and Voegtli); and Absent, 5 (Sens. Moen and Norquist; and Public Members Andreano, Blancke and Elconin).

At its March 25, 1987 meeting, the Legislative Council voted to introduce the proposal in the 1987 Legislative Session by a vote of Ayes, 18 (Speaker Loftus; Sen. Risser; Reps. Nelsen, Bell, Bradley, Coggs, Hauke, McEssy, Prosser, Schneider and Tesmer; and Sens. Davis, Engeleiter, Kreul, Lee, Moen, Norquist and Strohl); Noes, 0; and Absent, 3 (Rep. Clarenbach; and Sens. George and Harsdorf).

5. 1987 Assembly Bill 386, Relating to Expanding the Authority of the Wisconsin Health Facilities Authority to Issue Bonds and Finance Projects

At its February 23, 1987 meeting, the Special Committee on Long-Term Health Care Insurance recommended that the Legislative Council introduce the proposal by a vote of Ayes, 12 (Reps. Barrett, Grobschmidt, Merkt, Ourada and Robinson; and Public Members Abramson, Bartkowski, Blancke,

Elconin, Jardine, Stanchfield and Voegtli); Noes, 0; and Absent, 5 (Sens. Moen, Lorman and Norquist; and Public Members Andreano and Casper).

At its March 25, 1987 meeting, the Legislative Council voted to introduce the proposal in the 1987 Legislative Session by a vote of Ayes, 16 (Speaker Loftus; Sen. Risser; Reps. Nelsen, Bell, Bradley, Hauke, McEssy, Prosser, Schneider and Tesmer; and Sens. Davis, Kreul, Lee, Moen, Norquist and Strohl); Noes, 1 (Rep. Coggs); and Absent, 4 (Rep. Clarenbach; and Sens. Engeleiter, George and Harsdorf).

6. 1987 Assembly Bill 387, Relating to Review and Appeal Procedures Under a Medicare Supplement Policy, Medicare Replacement Policy or a Nursing Home Insurance Policy

At its February 23, 1987 meeting, the Special Committee on Long-Term Health Care Insurance recommended that the Legislative Council introduce the proposal by a vote of Ayes, 11 (Reps. Barrett, Grobschmidt, Ourada and Robinson; and Public Members Abramson, Bartkowski, Blancke, Elconin, Jardine, Stanchfield and Voegtli); Noes, 0; and Absent, 6 (Sens. Moen, Lorman and Norquist; Rep. Merkt; and Public Members Andreano and Casper).

At its March 25, 1987 meeting, the Legislative Council voted to introduce the proposal in the 1987 Legislative Session by a vote of Ayes, 18 (Speaker Loftus; Sen. Risser; Reps. Nelsen, Bell, Bradley, Coggs, Hauke, McEssy, Prosser, Schneider and Tesmer; and Sens. Davis, Engeleiter, Kreul, Lee, Moen, Norquist and Strohl); Noes, 0; and Absent, 3 (Rep. Clarenbach; and Sens. George and Harsdorf).

D. STAFF MATERIALS

Appendix 1 lists all materials received by the Special Committee. The following document, prepared by the Council Staff, may be of particular interest. This, and other materials listed in Appendix 1, are available at the Legislative Council offices:

- Staff Brief 86-15, Overview of Long-Term Care Insurance Issues, dated September 9, 1986, revised September 12, 1986, describes: (1) what constitutes long-term care; trends in population, utilization and expenditures; current financing mechanisms for long-term care; (2) types of insurance policies available; Wisconsin laws and regulations; perceived obstacles to the development of a market for long-term care insurance; and (3) recommendations related to financing long-term care in other studies.

PART III

BACKGROUND INFORMATION ON LONG-TERM CARE INSURANCE

"Long-term care services" generally refers to nursing homes, home health agencies and a variety of other services that assist a person with a chronic condition in living outside a nursing home. With the aging of the population of the United States and the increased expenditure for long-term care services, both in Wisconsin and in the United States as a whole, the means of financing those services becomes an important issue.

For the United States, the percent of the population age 65 and over increased from 8.1% in 1950 to 11.3% in 1980 and is projected to increase to 21.2% in 2030. However, the increase and projected increase in the population age 85 and over, those persons most in need of long-term care services, is even more dramatic. That group increased from 0.4% of the population in 1950 to 1.0% in 1980 and is projected to increase to 2.8% in 2030. Similar trends have occurred and are projected to occur in Wisconsin.

Expenditures for nursing home care in the United States increased from $0.5 billion in 1960 to $27.3 billion in 1982. Medicaid expenditures for nursing home care in Wisconsin increased from nearly $350 million in state fiscal year 1979-80 to nearly $460 million in state fiscal year 1984-85. Also, nursing homes are now treating patients who need more intensive services. In 1975, 41.9% of nursing home patients in Wisconsin were classified as needing skilled care or more intensive services; in 1985, the figure was 60.5%. Two factors may contribute to the increase in the percentage of patients needing more intensive services: (a) preadmission screening to determine whether a potential patient can be served in the community with available services, such as those under the Community Options Program; and (b) Medicare hospital reimbursement policies which result in earlier discharges from hospitals than in the past.

A variety of public and private financing mechanisms are available for long-term care. However, the overwhelming majority of nursing home costs, which are a major component of long-term care costs, are paid by Medicaid or resources of private-pay patients. Very little is paid for by Medicare or private insurance. In 1985, private insurance paid only 1% to 2% of costs incurred for nursing home services in the United States. These figures contrast significantly with the dominant role of private insurance in the financing of short-term, acute health care services for the general population, including the elderly.

Medicare supplement policies are privately financed insurance policies which provide broad physician and hospital coverage but limited nursing home benefits. These policies supplement the coverage of medical expenses which are eligible for publicly-financed Medicare coverage for elderly and disabled persons. In practice, however, both the Medicare program and Medicare supplement policies are largely limited in their coverage to short-term, acute medical needs within a doctor's office, a hospital or a nursing home or at home.

Less than 2% of the population age 65 and older were insured under long-term care insurance policies (commonly referred to as "nursing home policies" in Wisconsin) in 1985. Less than 25 insurance companies are active in the long-term care market in the United States at present. Only one insurance company at a time has sold long-term care insurance in Wisconsin since 1981. Between 1981 and 1986, only 17 persons purchased individual policies in Wisconsin. Various studies indicate that most persons erroneously believe that their long-term care medical needs are adequately covered by their health insurance policies or Medicare supplement policies.

PART IV

DESCRIPTION OF 1987 ASSEMBLY BILL 382

A. BACKGROUND

During the course of its deliberations, the Special Committee received testimony on specific ways in which the state could encourage the development of a market for long-term care insurance. These included: (1) expanding information programs to educate the public about the need for the increased usage of private resources for long-term health care; (2) subsidizing premiums for persons purchasing such insurance, based on the purchaser's ability to pay; (3) reinsuring by the state of policies issued in Wisconsin by long-term care insurers; and (4) allowing persons to retain liquid assets in excess of the amount which they would ordinarily be allowed to retain for purposes of Medicaid eligibility, if the persons purchased long-term care insurance.

Designing a program to incorporate these mechanisms to expand the role of private insurance in the coverage of long-term care costs involves: (1) the collection of actuarially useful data, which was not readily available to the Special Committee; and (2) the acquisition of waivers from the Medicaid eligibility standards from the Federal Department of Health and Human Services. In addition, attempting to design such a program would require extending the Special Committee's duration for a considerable period of time. As an alternative, the Special Committee developed 1987 Assembly Bill 382 to require the DHSS to design a program to encourage development of a market for long-term care insurance by use of some of these mechanisms.

B. MAJOR PROVISIONS

1987 Assembly Bill 382 requires DHSS, with the advice of the Council on Long-Term Care Insurance established by the Bill, the OCI, the BOALTC and the Department of Employe Trust Funds, to design a program to encourage a private market in long-term care insurance, using the market development incentives described above--premium subsidies, reinsurance by the state and retention of assets if long-term care insurance is purchased.

The Bill creates a Council on Long-Term Care Insurance in DHSS to advise DHSS on the design of the long-term care insurance program. The Council consists of nine members, of whom five shall be appointed by the Governor, two shall be appointed by the President of the Senate and two

shall be appointed by the Speaker of the Assembly. The Council "sunsets" on September 1, 1988.

The Bill requires DHSS to collect any data on health care costs and utilization that DHSS determines to be necessary in designing the program. The Bill further requires DHSS to submit a plan specifying the details of the program, including draft legislation to implement the program, to the Joint Committee on Finance and the standing committee dealing with health issues in each house of the Legislature by September 1, 1988.

The Bill also requires DHSS to consult with the Federal Department of Health and Human Services to determine the feasibility of procuring a waiver of federal regulations that will maximize use of federal Medicaid funding for the long-term care program. The Bill further allows the DHSS, with the advice of the Council on Long-Term Care Insurance, to examine the use of tax incentives for the sale and purchase of long-term care insurance.

Finally, the Bill defines "long-term care insurance."

PART V

DESCRIPTION OF 1987 ASSEMBLY BILL 383

A. BACKGROUND

One of the most recurrent statements made at the meetings of the Special Committee was that a significant part of the public is unaware of, or confused about, the necessity for insurance or other alternatives to finance nonacute, long-term health care, which may include extended nursing home residency, home health care and medically-related custodial care services. A major factor in the public's failure to make appropriate provision for long-term care needs is the lack of objective information and guidance about: (1) the limited usefulness of Medicare coverage and health insurance or Medicare supplement insurance in financing long-term care; and (2) the stringent income and asset eligibility requirements for Medicaid coverage for such care. [Medicare and Medicaid coverages are publicly financed; health insurance and Medicare supplement insurance are privately financed.]

An information service (commonly referred to as the "Medigap Hotline") is presently operated by the BOALTC, as authorized by s. 16.009 (1) (j), Stats., to provide information to consumers about insurance policies designed to supplement federal Medicare insurance. The Medigap Hotline is financed by a program revenue appropriation in the budget of the OCI under s. 20.145 (1) (g), Stats.

B. MAJOR PROVISIONS

1987 Assembly Bill 383 expands the authority of the BOALTC to provide "counseling," as well as information, regarding insurance policies available to supplement federal Medicare insurance coverage. It also authorizes the Medigap Hotline to provide information and counseling services regarding: (1) long-term care insurance which provides both extended nursing home and home health care services; and (2) the eligibility requirements for Medicaid.

In addition, the Bill requires the BOALTC to provide training, educational materials and technical assistance to volunteer organizations and private businesses which are willing and able to provide the insurance and Medicaid information to the public in one or more locations in Wisconsin.

To finance the increased costs and staff requirements associated with the expanded informational and counseling duties of the BOALTC, the Bill

increases the authorized full-time equivalent employe positions in the BOALTC by one and increases the program revenue appropriation of the OCI by $25,600 for fiscal year 1987-88 and by $32,600 for fiscal year 1988-89 for the purpose of funding the additional BOALTC activities.

PART VI

DESCRIPTION OF 1987 ASSEMBLY BILL 384

A. BACKGROUND

As noted earlier in this Report, the Special Committee received much testimony on the need for actions that would stimulate the development of a market for long-term care insurance.

The Group Insurance Board in the Department of Employe Trust Funds administers a number of group insurance plans for public employes. Included are health insurance plans, but not plans dealing specifically with long-term care.

B. MAJOR PROVISIONS

1987 Assembly Bill 384 requires the Group Insurance Board to offer to state employes and annuitants, and their spouses, children and parents, long-term care insurance policies, as defined under the Bill. The state is required to offer all policies that have been approved for sale in Wisconsin by the OCI, if the insurer requests that the policy be offered. The Bill further requires that the state provide a period of at least 30 days per year during which persons may elect to be covered under such a policy. The Bill allows insurers to impose underwriting considerations in determining which persons to cover and what premiums to charge.

The Bill further provides that, for any long-term care insurance policies that are so offered, the entire premium must be paid by the employe or annuitant, with no employer contributions by the state. Payment for such insurance will be made by a deduction from the earnings or annuity payable to the employe or annuitant or, if those amounts are insufficient to cover the premium, from a direct payment by the employe or annuitant.

PART VII

DESCRIPTION OF 1987 ASSEMBLY BILL 385

A. BACKGROUND

Under present Wisconsin law, any person or organization desiring to operate a home health agency must be licensed under s. 141.15, Stats., by the DHSS and conform with the capital expenditure review and approval (formerly called "certificate of need") program established by DHSS under ss. 150.61 to 150.85, Stats. The licensure requirements for home health care agencies are generally designed to ensure quality of care and consumer protection {ch. HSS 133, Wis. Adm. Code}. The capital expenditure review requirements and criteria for home health care agencies place primary emphasis upon cost containment by establishing a formula related to "need for service" {ch. HSS 123, Wis. Adm. Code}. At present, only six of the 72 counties in Wisconsin are classified as in need of additional home health agencies.

The Special Committee received testimony that some continuing care retirement communities regulated under ch. 647, Stats. (which provide nursing, medical and personal services in addition to food, shelter and laundry), were willing and able to provide home health care services to their residents in a cost-efficient manner. However, the testimony indicated that the retirement communities were unable to satisfy the capital expenditure review program criteria set forth in ch. HSS 123, Wis. Adm. Code. Retirement community representatives stressed the medical and psychological benefits associated with on-premises delivery of home health care services by the medical and medical-related staff of the retirement community. Such care by the retirement community maximizes the continuity and spectrum of health care available to its residents.

B. MAJOR PROVISIONS

1987 Assembly Bill 385 permits any continuing care retirement community regulated under ch. 647, Stats., to provide home health services only to its residents by excluding the retirement community from the capital expenditure review and approval requirements of s. 150.61 (6), Stats. However, the DHSS licensure requirements of s. 141.15, Stats., for a home health agency remain applicable to any retirement community regulated under ch. 647, Stats., that operates such an agency.

PART VIII

DESCRIPTION OF 1987 ASSEMBLY BILL 386

A. BACKGROUND

In the course of its review of alternatives to long-term care insurance, the Special Committee received testimony to the effect that residence in a continuing care retirement community under a continuing care contract may provide a satisfactory alternative to long-term care insurance, for some persons.

The WHFA is authorized under ch. 231, Stats., to issue tax-exempt bonds to finance or refinance certain types of health facilities or projects related to health facilities. The bonds do not constitute a debt of the state.

On December 20, 1985, the Attorney General issued an unpublished opinion (OAG 47-85) that:

1. A residential facility is not a "health facility";

2. An integrated facility which combines nursing home and residential care is not considered a "project related to a health facility"; and

3. The WHFA may not issue bonds to refinance the outstanding indebtedness of an "integrated health care and elderly housing facility."

The Attorney General's Opinion raised doubts as to whether the WHFA is authorized to finance the acquisition, construction, renovation, improvement or equipping of a continuing care retirement community.

The Federal Tax Reform Act of 1986 (P.L. 99-514) imposed new restrictions on the issuance of many tax-exempt state and municipal bonds. However, an exemption to some of the restrictions was provided in the 1986 legislation for "qualified 501 (c) (3) bonds." The reference to "501 (c) (3)" is to the section of the federal Internal Revenue Code which describes certain tax-exempt organizations operated exclusively for religious, educational, charitable, scientific and certain other specified purposes.

Tax-exempt bonds issued by the WHFA for continuing care retirement communities owned by a governmental unit or by a 501 (c) (3) organization would not be subject to the "volume caps" (limitations) established by the Tax Reform Act of 1986 for each state for certain types of nongovernmental

"private activity bonds" which formerly were tax-exempt. Eligibility for tax-exempt qualified 501 (c) (3) bonding which is free of the state bonding limits requires that: (1) all the financed property be owned by a governmental unit or by a 501 (c) (3) organization; and (2) 95% of the net bond proceeds be used for the tax-exempt purpose of the organization. Qualified 501 (c) (3) bonds may not exceed $150 million per user.

B. MAJOR PROVISIONS

1987 Assembly Bill 386 authorizes the WHFA to issue tax-exempt bonds for the acquisition, construction, renovation, improvement, equipping or refinancing of certain health facilities owned by a governmental unit or by a nonprofit organization exempt from federal income taxation under s. 501 (c) (3) of the Internal Revenue Code. An eligible health facility must provide nursing, medical or personal care services in addition to food, shelter or laundry under a continuing care contract regulated under ch. 647, Stats. (i.e., a regulated continuing care retirement community).

Fifteen continuing care retirement communities are regulated by the OCI under ch. 647, Stats., and are potentially eligible for tax-exempt financing or refinancing under the Bill.

PART IX

DESCRIPTION OF 1987 ASSEMBLY BILL 387

A. BACKGROUND

Before 1981, nursing home insurance policies were subject to the same state regulatory provisions as those applied to health insurance policies. The regulations were largely designed to promote disclosure of policy terms and financial soundness of the insurer. Widespread consumer complaints about the limited usefulness of the nursing home coverage offered by insurers led to an investigation of the complaints by the OCI.

To ensure that nursing home insurance policies provided useful benefits, in 1981 the OCI promulgated s. Ins 3.46, Wis. Adm. Code, to establish: (1) minimum benefits coverage in any licensed Wisconsin nursing home; (2) maximum policy deductibles (such as uncovered nursing home days); and (3) prohibited provisions. Among the prohibited provisions was the commonly-used policy provision that hospitalization of a certain length of time must precede the nursing home care to be eligible for coverage under a nursing home insurance policy. In testimony before the Special Committee, the Wisconsin regulation was frequently cited as a reason why the number of insurers offering long-term health care insurance (nursing home insurance) declined from 15 to one between 1980 and 1986.

Concurrent with the work of the Special Committee, the OCI was considering revisions to s. Ins 3.46. On January 1, 1987, a revised version of s. Ins 3.46 was promulgated by the OCI, to be effective for all policies or riders issued on or after March 1, 1987. One of the principal changes is to allow insurers to offer a nursing home insurance policy which requires hospitalization as a condition for nursing home benefits, provided the insurer also makes an equivalent no-hospitalization policy available to the public.

At the time that the OCI was revising s. Ins 3.46, the Special Committee considered a variety of alternatives to the hospitalization requirement, ranging from a mandatory three-day hospitalization requirement in all nursing home policies to a prohibition on conditioning nursing home benefits on any prior hospitalization. The Special Committee recognized that a prior hospitalization requirement performs a screening function and ultimately concluded that requiring the establishment of a review and appeal procedure by each insurer issuing either a nursing home insurance policy or a Medicare supplement policy, for use by the insured, the policyholder and his or her representative: (1) would adequately protect consumer interests; and (2) would also permit insurers to experiment with a variety of cost containment mechanisms for screening

unwarranted benefit usage. The review and appeal procedure is made available at the time nursing home benefits are denied under the policies subject to the provision.

B. MAJOR PROVISIONS

1987 Assembly Bill 387 requires each insurer offering a Medicare supplement policy or a nursing home insurance policy to establish a procedure for the review and appeal of a denial of benefits. The procedure is available to the policyholder, the insured or his or her representative. The procedure is subject to the approval of the OCI.

The review and appeal procedure must include the following elements:

1. The insurer must communicate the existence of the review and appeal procedure to the policyholder and the insured at the time of denial of any benefits under its policy.

2. The request for review and appeal of a denial of benefits must be in writing but may be in any form and may include supporting material.

3. The insurer must promptly conduct the review and appeal.

4. The insurer must promptly notify the person submitting the request for a review and appeal of a denial of benefits of the result of the procedure.

5. The insurer must annually provide the OCI with a summary of its reviews and appeals and their respective dispositions.

RNS:wf:kja;kja;las

APPENDIX 1

COMMITTEE MATERIALS

APPENDIX I

COMMITTEE MATERIALS

Staff Materials

1. Staff Brief 86-18, Overview of Long-Term Care Insurance Issues (September 9, 1986; Revised September 12, 1986).

2. MEMO NO. 1, Assessment of Nursing Home Patients or Potential Patients Under the Community Options Program (November 7, 1986).

3. MEMO NO. 2, Home Care Coverage Under Disability Insurance Policies (November 14, 1986).

4. MEMO NO. 3, Required Medicare Certification for New Nursing Home Beds (December 12, 1986).

5. MEMO NO. 4, Continuing Care Retirement Communities--Certain Statutory Impediments (December 12, 1986).

6. MEMO NO. 5, Qualifications for Medicaid, with Liquid Assets Exceeding the Current Limits, Conditioned on Purchase of Private Insurance (December 11, 1986), including an exchange of letters between Linda Reivitz, Secretary, Wisconsin Department of Health and Social Services (DHSS) (October 24, 1986) and Barbara Gagel, Regional Administrator, Region V, Health Care Financing Administration (November 21, 1986).

7. MEMO NO. 6, Administrative Rule Standards for Nursing Home Insurance (December 12, 1986).

8. MEMO NO. 7, Proposals Recommended for Consideration by the Special Committee (December 18, 1986).

Other Materials

1. Long-Term Care Financing: The Role of Private Insurance, DHSS (December 28, 1984).

2. Memorandum from Thomas P. Fox, Commissioner of Insurance, Nursing Home Insurance (September 15, 1986).

3. Remarks of Linda Reivitz, Secretary, DHSS (September 15, 1986).

4. "Court Blocks Changes in Blue Cross Coverage," Wisconsin State Journal (August 31, 1986).

5. Memorandum from Blue Cross & Blue Shield United of Wisconsin to Home Health Agencies (August 1, 1986).

6. Draft Statement, "Question Five: What Actions have States Taken to Regulate the Sale and Content of Long-Term Care Insurance Policies," by David Landes, National Conference of State Legislatures (October 15, 1986).

7. Statement by Conan Edwards, American Association of Retired Persons (October 15, 1986).

8. Unpublished manuscript, "Longlife Insurance: A Prototype for Funding Long Term Care and Financial Planning in Maturity," by Thomas E. Getzen and Virginia D. Elsenhans, Temple University, submitted by Kathryn Morrison, DHSS (October 15, 1986).

9. Memorandum from Aleta Barmore, Wisconsin Homecare Organization (October 15, 1986).

10. Statement, "Long-Term Care Insurance and Community Based Services," by Tom Anderson, Tau Home Health Care Agency, Inc. (October 15, 1986).

11. Kane, Rosalie A., and Robert L. Kane, "The Feasibility of Universal Long-Term-Care Benefits," reprint from The New England Journal of Medicine (May 23, 1985).

12. "Insurance for Nursing Bills Can be Costly, Leave Holes," The Wall Street Journal (October 13, 1986).

13. "Elderly Couples Rearranging Assets to Anticipate a Need for Medicaid," The Wall Street Journal (October 13, 1986).

14. Andreano, Ralph, and Thomas Helminiak, University of Wisconsin-Madison, Long Term Care Insurance: A White Paper for Wisconsin (November 11, 1986).

15. Statement by Mary Michal, Wisconsin Association of Homes and Services for the Aging (November 14, 1986).

16. Statement regarding the need to support long-term health care insurance and alternatives to the long-term health care insurance such as Life-Care Continuing Care Retirement Communities, by David Krejci, Alexian Village of Milwaukee, Inc. (November 14, 1986).

17. Memorandum from Gina Dennik-Champion, Wisconsin Adult Daycare Association (November 14, 1986).

18. Permit-Holding Continuing Care Facilities, Office of the Commissioner of Insurance (July 1, 1985).

19. Letter from Professor Ralph Andreano (October 21, 1986).

20. Letter from Amanda Sheedy, Health Insurance Association of America (November 25, 1986).

21. Testimony by Mary Calhoun, Grancare Nursing Home (November 14, 1986).

22. Rice, Thomas, and Jon Gabel, "Protecting the Elderly Against High Health Care Costs," Health Affairs (Fall 1986).

23. Memorandum, Information for Legislative Council Committee, from Shelley Hagen, DHSS (undated).

24. Unpublished manuscript, "Private Financing of Home and Community Care for the Elderly: The Insurance Option," by Mark R. Meiners.

25. Meiners, Mark R., "Shifting the Burden: The Potential Role of the Private Sector in Long Term Care Insurance for the Elderly," presented at the 109th Annual Meeting of the American Public Health Association, Los Angeles, California (November 1-5, 1981).

26. Meiners, Mark R., and James O. Golub, "Long-Term Care Insurance: The Edge of an Emerging Market," Healthcare Financial Management (March 1984).

27. Meiners, Mark R., "An Idea Whose Time Has Come: Long Term Care Insurance," Generations (Summer 1985).

28. Memorandum, "Adoption of WLCS: 196/1 Relating to Expanding the Authority of the Wisconsin Health Facilities Authority to Finance Projects," from Tom Ramsey, Wisconsin Association of Homes and Services for the Aging (January 1, 1987).

29. Notes and letters relating to Medicare bed certification, DHSS (February 20, 1987).

30. Letters from Representative Thomas M. Barrett to Thomas P. Fox, Commissioner of Insurance, and Timothy F. Cullen, Secretary of DHSS,

regarding preparation of a brochure on private and public funding mechanisms for long-term care (February 5, 1987).

31. Letter from Thomas P. Fox, Commissioner of Insurance, in response to the February 5, 1987 letter (February 11, 1987).

32. Letter from Representative Thomas M. Barrett to Timothy F. Cullen, Secretary of DHSS, regarding Medicare certification of nursing homes (March 24, 1987).

APPENDIX 2

CORRESPONDENCE SETTING FORTH AN INFORMAL RECOMMENDATION REGARDING PREPARATION OF A BROCHURE FOR CONSUMER INFORMATION ON PRIVATE AND PUBLIC MECHANISMS TO FINANCE LONG-TERM CARE

APPENDIX 2

STATE OF WISCONSIN

LEGISLATIVE COUNCIL
ROOM 147 NORTH, STATE CAPITOL
MADISON, WI 53702
TELEPHONE (608) 266—1304

Bonnie Reese
Executive Secretary

February 5, 1987

Mr. Thomas P. Fox, Commissioner
Office of the Commissioner of Insurance
123 West Washington Avenue, 7th Floor
Madison, WI 53702

Dear Tom:

As you know, the Legislative Council's Special Committee on Long-Term Health Care Insurance is currently examining: (1) the need for long-term health or custodial care insurance for the elderly; (2) ways to encourage the private sector to offer such insurance; and (3) possible alternatives to insurance mechanisms. Based on information presented to date, Committee members have concluded that your Office could substantially assist state residents to make a more realistic and valid assessment of their present private resources and the availability of public resources to cover their nursing home, home health care and custodial care needs as they grow older.

The most recurrent statement made to Committee members by persons testifying at our meetings is that a significant part of the public is unaware of or confused about: (1) the limited usefulness of Medicare coverage and disability or Medicare supplement insurance in financing long-term care; and (2) the stringent income and asset eligibility requirements for Medicaid coverage of such care. The Special Committee has concluded that a public information campaign is an essential ingredient in developing viable alternatives to present methods of financing long-term care.

The Committee members understand that your office has undertaken preliminary steps to prepare a brochure on the limitations of insurance with respect to long-term care services. The Special Committee on Long-Term Health Care Insurance requests that your office expand on that effort by, in cooperation with the Department of Health and Social Services, preparing (either directly or by contract) a brochure which explains both: (1) the inadequacy of Medicare and disability or Medicare supplement insurance coverage for nonacute long-term health care; and (2) the eligibility standards for Medicaid coverage of such costs. Widespread distribution of the brochure, particularly among the population group aged 45 and older, hopefully will increase the understanding of the public with

respect to the financial aspects of long-term health care. Such information may also facilitate the development and marketing of new insurance products or other private resources to finance a much larger part of long-term care costs than private payments currently do.

The next meeting of the Special Committee is scheduled for Monday, February 23, 1987. I would be appreciative if, in advance of that meeting, either I or the Legislative Council Staff (Janice Baldwin at 267-7251 or Richard Sweet at 266-2981) were informed about the status of this request so that a report may be made to Committee members.

Your cooperation and assistance in this effort is appreciated. Thank you.

Sincerely yours,

Thomas M. Barrett

Representative Thomas M. Barrett
Chairperson, Special Committee on
Long-Term Health Care Insurance

TMB:wf:kja:ckm;las

STATE OF WISCONSIN

LEGISLATIVE COUNCIL
ROOM 147 NORTH, STATE CAPITOL
MADISON, WI 53702
TELEPHONE (608) 266-1304

Bonnie Reese
Executive Secretary

February 5, 1987

Mr. Timothy F. Cullen, Secretary
Department of Health and Social Services
One West Wilson Street, Room 650
Madison, WI 53702

Dear Tim:

As you know, the Legislative Council's Special Committee on Long-Term Health Care Insurance is currently examining: (1) the need for long-term health or custodial care insurance for the elderly; (2) ways to encourage the private sector to offer such insurance; and (3) possible alternatives to insurance mechanisms. Based on information presented to date, Committee members have concluded that your Department could substantially assist state residents to make a more realistic and valid assessment of their present private resources and the availability of public resources to cover their nursing home, home health care and custodial care needs as they grow older.

The most recurrent statement made to Committee members by persons testifying at our meetings is that a significant part of the public is unaware of or confused about: (1) the limited usefulness of Medicare coverage and disability or Medicare supplement insurance in financing long-term care; and (2) the stringent income and asset eligibility requirements for Medicaid coverage of such care. The Special Committee has concluded that a public information campaign is an essential ingredient in developing viable alternatives to present methods of financing long-term care.

The Special Committee on Long-Term Health Care Insurance requests that your Department cooperate with the Office of the Commissioner of Insurance in preparing (either directly or by contract) a brochure which explains both: (1) the inadequacy of Medicare and disability or Medicare supplement insurance coverage for nonacute long-term health care; and (2) the eligibility standards for Medicaid coverage of such costs. Widespread distribution of the brochure, particularly among the population group aged 45 and older, hopefully will increase the understanding of the public with respect to the financial aspects of long-term health care. Such information may also facilitate the development and marketing of new

insurance products or other private resources to finance a much larger part of long-term care costs than private payments currently do.

The next meeting of the Special Committee is scheduled for Monday, February 23, 1987. I would be appreciative if, in advance of that meeting, either I or the Legislative Council Staff (Janice Baldwin at 267-7251 or Richard Sweet at 266-2981) were informed about the status of this request so that a report may be made to Committee members.

Your cooperation and assistance in this effort is appreciated. Thank you.

Sincerely yours,

Thomas M. Barrett

Representative Thomas M. Barrett
Chairperson, Special Committee on
Long-Term Health Care Insurance

TMB:wf:kja:ckm;las

The State of Wisconsin
Office of the Commissioner of Insurance

Thomas P. Fox
Commissioner
(608) 266-3585

February 11, 1987

Representative Thomas M. Barrett, Chairperson
Special Committee on Long-Term Care Insurance
Legislative Council
Room 147 North, State Capitol
Madison WI 53702

Dear Representative Barrett:

Thank you for your letter regarding the request concerning a brochure on long term care insurance.

As your letter indicates, we have already begun to work on this type of guide and will be happy to consult with the Department of Health and Social Services in this project.

We would also appreciate the assistance of any members of the committee who are interested in working on the buyer's guide. Perhaps you could ask for volunteers at your next meeting.

Mary Grossman of my staff will be coordinating this effort and will be convening a meeting in late February or early March of those who would like to make a direct contribution to it.

Please let me know if you would like any additional information.

Sincerely yours,

Tom

Thomas P. Fox
Commissioner of Insurance

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P.O. Box 7873 Madison, WI 53707

APPENDIX 3

CORRESPONDENCE SETTING FORTH AN INFORMAL RECOMMENDATION REGARDING MEDICARE CERTIFICATION OF NURSING HOMES

APPENDIX 3

STATE OF WISCONSIN

LEGISLATIVE COUNCIL
ROOM 147 NORTH, STATE CAPITOL
MADISON, WI 53702
TELEPHONE (608) 266—1304

Bonnie Reese
Executive Secretary

March 24, 1987

Timothy F. Cullen, Secretary
Department of Health and Social Services
1 West Wilson Street, Room 663
Madison, WI 53702

Dear Secretary Cullen:

I am writing to you as Chairperson of the Legislative Council's Special Committee on Long-Term Health Care Insurance. That Committee has completed its deliberations and made several recommendations, some of which deal with Medicare certification of skilled nursing facility (SNF) beds.

The members of the Special Committee concur that it is important that the state pursue the objective of improving collections from Medicare, a program that is financed by the federal government, for nursing home residents who are eligible for both Medicare and Medicaid. The Special Committee approved a bill draft to strengthen the current statutory requirements regarding Medicare certification of SNF's. That bill draft is scheduled to be presented to the Legislative Council on March 25, 1987. In addition, the Special Committee recommended that the Department stringently enforce current statutes, which state that the Department may require that SNF's recover nursing home costs from Medicare.

The purpose of this letter is to convey to you that recommendation of the Special Committee. For dual entitlees, all efforts should be made to recover costs under Medicare, before Medicaid is held liable. To the extent that improvements can be made in this area, savings will accrue to the state through reduced Medicaid costs, 42% of which are paid by state government.

I appreciate this opportunity to convey the above recommendation of the Special Committee. Thank you for your attention to it.

Sincerely,

Tom Barrett

Representative Tom Barrett
Chairperson, Special Committee on
Long-Term Health Care Insurance

TB:wr